

As such, 37 CFR 1.475, which corresponds to PCT Rule 13, should be followed when considering such issues. As stated in MPEP 1893.03 (d):

Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371.

In this regard, the Office Action comments that the inventions listed as Groups I-X and the species noted above do not comply with the criteria under PCT Rule 13.1. However, during the international phase of the corresponding PCT application, the PCT International authorities did not raise any such issues. This is evidenced by the Written Opinion and the International Preliminary Report on Patentability (copies attached), which issued in the PCT case, which in both cases did not present any indications under "Box No. IV". This inconsistency thus indicates that the relevant PCT criteria have not been applied in the instant national phase application.

Further, Applicants respectfully submit that the Office Action has failed to establish that a search of the complete application would be an undue burden as required by MPEP 803. It is Applicants' position that the Office Action has failed to establish that a search of the entire application constitutes an undue burden.

The present election is made without prejudice or disclaimer as to any non-elected subject matter. Applicant specifically reserves the right to file one or more divisional application(s) directed to non-elected subject matter.

In light of the foregoing response, all the outstanding objections and rejections are considered overcome. Applicant respectfully submits that this application should now be in condition for allowance and respectfully requests favorable consideration.

Respectfully submitted,

March 9, 2009

Date



Attorney for Applicant
Eric D. Babych
c/o Ladas & Parry LLP
224 South Michigan Avenue
Chicago, Illinois 60604
(312) 427-1300
Reg. No. 57,542